

**RESOLUTION OF THE LAND USE BOARD OF THE BOROUGH OF
BEACH HAVEN COUNTY OF OCEAN AND STATE OF NEW JERSEY
DOCKET NO. 2020:05**

WHEREAS, Margaret Damiani and Patrick Damiani have made application to the Land Use Board of the Borough of Beach Haven for variances from Borough of Beach Haven parking requirements to permit the expansion of the property to increase boat slips from 24 to 31 slips; and to provide 17 additional seats increasing the seating from 44 seats to 61 seats for the restaurant use at property known and designated as Lots 3 and 3.01 Block 141, Polly's Dock, 112 N West Avenue in the Borough of Beach Haven, County of Ocean and State of New Jersey; and

WHEREAS, the Land Use Board considered this application at a public hearing on May 4, 2020 which was conducted remotely via a ZOOM platform with both audio and visual components; due to COVID-19. The applicants were represented by James S. Raban, Esq. The application dated March 13, 2020 was entered into evidence as Exhibit A-1; the plan titled "NJDEP APPLICATION PLAN Prepared for POLLY'S Dock Block 141 Lots 3 & 3.01 Beach Haven Borough, Ocean County, New Jersey" dated May 9, 2018 with a revision date of September 7, 2018 prepared by East Coast Engineering, Inc. under signature and seal of Jason M. Marciano, PE, PP, was entered into evidence as Exhibit A-2; Resolution of Memorialization 2018-11 adopted by the Beach Haven Land Use Board on July 2, 2018 was entered into evidence as Exhibit A-3; the statement under signature of Margaret Damiano attached to the application was entered into evidence as Exhibit A-4; the Site Plan prepared by Horn, Tyson and Yoder, Inc. titled "Site Plan Lot 3 Block 141 Tax Map Sheet #19, Borough of Beach Haven, Ocean County, New Jersey dated July 20, 2007 with a final revision date of April 20, 2011 was entered into evidence as Exhibit A-5. The review letter of Owen, Little and Associates, Inc. dated April 1, 2020 under signature of Frank J. Little, Jr. P.E., P.P., and C.M.E. was entered into evidence as Exhibit B-1. Testimony was offered by Margaret Damiani, one of the applicants. Public comment was offered by Karen Pelino; William Burris; Melanie Magaziner, Karl Anderson, Barbara Cona and Kristy Davis; and

WHEREAS, the Land Use Board after considering the Application, documentation entered into evidence, and testimony of the witnesses has made the following factual findings:

1. All jurisdictional requirements have been met.
2. Applicants are the owners of the subject property which is located at 112 N. West Avenue, Lots 3 and 3.01 Block 141 Beach Haven, New Jersey, situate in the MC-Marine Commercial Zone. The property maintains a marina with a boat rental service and transient boat slips; a bait and tackle retail operation; a restaurant and single family residential apartment. It appears that the business operations at the site are operated by Polly's Dock, LLC who has prosecuted prior applications before the Board.
3. Polly's Dock, LLC was granted prior approval for site plan and variances together with waivers to permit the installation of a kitchen at an existing building for the preparation and take out sale of a limited menu and food items at premises known and designated as Lot 3 Block 141; 112 North West Avenue in the Borough of Beach Haven, County of Ocean and State of New Jersey; under Docket Number 2011-03 adopted by the Board on September 6, 2011 which approvals were subsequently amended to permit applicant to utilize gas appliances at the site, inclusive of a fryolator and cooking equipment with open flames; to accommodate seating for 20 patrons and provide two (2) wait staff; and to increase the hours of operation from 6:00 AM until 11:00 PM; under Docket 2016:05 adopted by the Board on April 4, 2016. Under application Docket Number 2018-11 on June 4, 2018 the Land Use Board considered an application by Margaret Damiani and Patrick Damiani to permit the increase of seating from 20 to 44 seats and increase the wait staff from 2 to 4 servers. The Board approved that application subject to conditions; and memorialized the approval under Resolution of Memorialization 2018-11 adopted on July 2, 2018.
4. Applicant has received CAFRA approval to permit the construction of additional decking and docks at their property as reflected on the plan entered into evidence as Exhibit A-2; they also received a Tier 1 Boating Infrastructure Grant from the State of New Jersey Department of Transportation. Applicant also testified that

the United States Army Corps of Engineers approved their deck and dock expansion project in 2018.

5. As previously approved and memorialized applicant has maintained a boat and vessel rental business together with a bait and tackle shop at their property; they utilize twelve (12) boat slips for their rental operation; the remaining twelve (12) boat slips are for transient rentals. In accordance with the recent approvals applicants have constructed the additional decking and docks to provide seven (7) additional boat slips at the property. The deck and delineation of the 31 boat slips (existing and proposed) are shown on Exhibit A-2. The boat rental and bait and tackle uses, according to applicant have been in existence since the 1940's.
6. Applicant further testified that they currently do not provide overnight slippage to transient customers. Applicant proposes to increase the transient slips from 12 to 19 slips; utilizing the additional slips for transient purposes. It is their intention to provide marine access to many visitors to the Borough, who may visit the area and take advantage of the amenities offered by the Borough and its cultural and business community. Applicants proffer that the users of the transient boat slips do not require parking, as they arrive and leave by boat, and do not have vehicles when docked at the facility. The Board further finds that under Borough Ordinance the parking requirements at the site are one (1) space for three (3) boat slips; 11 parking spaces required; two (2) spaces for the residential unit; 2 parking spaces required; one (1) parking space for 600 gross floor area (commercial space); whereupon a total of fourteen (14) parking spaces are required; where six (6) parking spaces are provided.
7. There are not any proposed changes to the upland property.
8. Applicant further testified, if warranted, they will provide with the terms and conditions of Ordinance Chapter 112- Houseboats
9. It was testified by the applicant and public that applicant's employees maneuver the boats at the marina in a proper manner; taking into account the shallow water towards the upland portion of the site.
10. Applicant testified that there were six (6) parking spaces at the site; and presented a form of seating plan. The Board suggested that the application be bifurcated to enable applicant to present additional information regarding their request to

increase the seating; and to consider the parking variance for the seven (7) additional parking spaces.

11. There was public comment regarding the actual location of the boat slips and concern raised upon applicants providing dockage on the north side of applicants dock into the Borough of Beach Haven public docks and riparian grant, and the neighboring riparian grant. Exhibit A-2 submitted by the applicant does not provide for dockage on the north side of applicants dock; all dockage and slips are located within applicant's riparian grant. Any modification of the plan submitted including changes to the delineation of the location of the slips or additional docking or boat slips would be subject to further Board action; and for a determination if additional parking may be required. The Board is solely considering the plan submitted and slip location set forth therein and entered into evidence on May 4, 2020 at Exhibit A-2; and



WHEREAS, the Land Use Board of the Borough of Beach Haven has determined that the relief requested by Patrick C. Damiani and Margaret L. Damiani for a parking variance to permit seven (7) additional boat slips limited to transient uses, as aforementioned can be granted without substantial detriment to the public good and without impairing the intent and purposes of the zone plan and zoning ordinances of the Borough of Beach Haven as there are not any changes or modifications to the building or site proposed; the additional boat slips for transient use only, as presented to the Board in Exhibit A-2, will not, by their nature, generate additional vehicular traffic or parking requirements at the site. The use is permitted; the nonconforming conditions will not be exasperated; and the improvement of the Marine Commercial District conforms to the intent of the Borough Master Plan. The Board is deferring on its decision regarding applicants variance request to increase their seating by 17 seats for a total of 61 seats at the site, pending its receipt and review of additional information; and a subsequent public hearing.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Beach Haven has determined that the relief requested by Patrick C. Damiani and Margaret L. Damiani, the owners of the property for a parking variance to permit

seven (7) additional boat slips, for transient uses; increasing the total boat slips from 24 boat slips to 31 boat slips, as delineated on the plan entered into evidence as Exhibit A-2; , designated 12 boat slips for the existing boat rental business and 19 boat slips for transient guests, at their property known as Polly's Dock, LLC located at Lot 3 Block 141; 112 North West Avenue in the Borough of Beach Haven, County of Ocean and State of New Jersey;; be and hereby is, conditionally approved.

BE IT FURTHER RESOLVED that the decision of the Board upon applicants variance request to increase their restaurant seating by 17 seats for a total of 61 seats, has been deferred; to permit applicant an opportunity to submit additional information to the Land Use Board, and for a subsequent hearing to be conducted on that request. The Board has not yet acted on the variance request for additional seating; it will be considered at the June 1, 2020 meeting of the Board.

BE IT FURTHER RESOLVED that the Board reconfirms all of the terms and conditions and their findings set forth in the prior Resolution of Memorialization Docket 2011- 03 adopted on September 6, 2011 and Resolution of Memorialization Docket 2016-05 adopted on April 4, 2016; except as modified herein ; whereupon Applicants and their operating company Polly's Dock, LLC shall conform to all of the requirements, limitations and conditions contained therein; except as modified by the amendments approved herein an increase of seating by 24 patrons for total seating of 44 people and a total wait staff of 4 people; increasing the prior approved amount of 2 to 4 people.; and Resolution 2018-11 adopted by the Board on July 2, 2018.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon Applicant's compliance with all terms and conditions of the letters of the Board Engineer, Frank J. Little, Jr., P.E., P.P., and C.M.E., dated April 1, 2020, as entered into evidence as Exhibit B-1.

BE IT FURTHER RESOLVED that the Applicant is required to comply with all ordinances of the Borough of Beach Haven, and failure to specify compliance herein

shall not be deemed a waiver or recommendation by the Land Use Board with respect to Borough Ordinances, including the Zoning Ordinances.

BE IT FURTHER RESOLVED that this approval is subject to all terms and conditions as set forth herein and all representations of applicants' witnesses placed on the record at the public hearings conducted on May 4, 2020 when this matter was considered.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon applicants complying with any and all technical revisions and submissions as the Borough Engineer may require.


BE IT FURTHER RESOLVED that this approval is granted only for the boat slips as designated and located upon the Plan presented to the Board and entered into evidence as Exhibit B-2. Any relocation of the Boat slips or modification of the approved plan, including, but not limited to additional boat slips or dockage, shall require further action by the Board; the plan submitted herein does not reflect any dockage or boat slips on the north side of applicants dock or within the Borough of Beach Haven right of way or public dock area or upon adjoining riparian grants; any such dockage and/or boat slips are not approved by the Board.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon Applicant satisfying all Land Use Development fees as set forth in Chapter 102, Section 102-5 et seq. of the Code of the Borough of Beach Haven.


COLLEEN MCNALLY, SECRETARY

-CERTIFICATION-

I, COLLEEN MCNALLY, Secretary of the Land Use Board of the Borough of Beach Haven, County of Ocean and State of New Jersey, do certify that the foregoing is a true copy of a Resolution adopted by the Land Use Board of the Borough of Beach Haven at a public meeting held on June 1, 2020.



COLLEEN MCNALLY, SECRETARY